

Message Text

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ACTION ARA-06

INFO OCT-01 SS-14 ISO-00 OFA-01 NSC-05 NSCE-00 IO-03 L-01

SP-02 EB-03 DLOS-03 OES-02 INR-05 CIAE-00 PM-03

DODE-00 ARAE-00 /049 W

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P R 181100Z APR 75

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC PRIORITY 7643

INFO USMISSION GENEVA

C O N F I D E N T I A L BRASILIA 2971

LIMDIS

E.O. 11652: GDS

TAGS: EFIS, BR

SUBJECT: NOTE TO GOB ON SHRIMP VESSEL SEIZURE

REF: STATE 86102 BRASILIA 2783

GENEVA PASS CLINGAN

1. SUMMARY - EMBASSY DELIVERED NOTE PROTESTING SIZURE OF US SHRIMP BOATS. FOREIGN MINISTRY OFFICIAL EXPRESSED UNDERSTANDING OF US POSITION, SAID GOB WOULD BE OBLIGED TO SET FORTH ITS POSITION IN RESPONSE, AND CAUTIONED AGAINST PROBLEMS THAT WOULD ARISE IF GOB FORCED TO APPLY NATIONAL LEGISLATION IN FUTURE INCIDENTS. END SUMMARY.

2. EMBASSY OFFICERS DELIVERED NOTE, WITH CHANGES PRESCRIBED IN STATE REFTTEL, APRIL 16 TO MINISTER SERGIO BATH, ACTING HEAD OF FOREIGN MINISTRY'S ECONOMIC DEPARTMENT. BATHS' IMMEDIATE REACTION UPON READING NOTE WAS THAT IT ESSENTIALLY "NULLIFIED SHRIMP AGREEMENT." HOWEVER, UPON SECOND CONSIDERATION AND AFTER BRIEF DISCUSSION, HE RECOGNIZED AND AGREED THAT INTERPRETATION OF APPLICATION OF AGREEMENT AS EXPRESSED IN NOTE WAS INTERPRETATION CONSISTENT WITH US JURIDICAL POSITION. HE RESPONDED THAT GOB EQUALLY BELIEVED THAT ITS
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INTERPRETATION OF AGREEMENT, I.E., THAT US VESSELS FISHING

OUTSIDE OF AGREEMENT AREA ARE IN VIOLATION, WAS CONSISTENT WITH GOB JURIDICAL POSITION AND THAT HE COULD ACCEPT BUT NOT AGREE WITH USG PROTEST ON SEIZURE OF VESSELS. BATH SAID GOB WOULD FEEL OBLIGED TO SET FORTH ITS POSITION IN RESPONSE TO EMBASSY'S NOTE. HE ADDED THAT GOB RESPONSE WOULD BE A LEGALISTIC ONE, SETTING FORTH GOB INTERPRETATION AND SAID HE HOPED THAT EXCHANGE OF NOTES WOULD SATISFY JURIDICAL REQUIREMENTS OF BOTH SIDES AND THAT THIS PARTICULAR INCIDENT COULD END THERE. HE COMMENTED THAT IF ISSUE WERE PRESSED TO THE POINT THAT GOB WAS OBLIGED TO APPLY NATIONAL LEGISLATION SHOULD A FUTURE INCIDENT OCCUR, A MORE SERIOUS CONFLICT BETWEEN THE TWO GOVERNMENTS WOULD ARISE. HE SAID THAT PROCESSING OF CASES UNDER NATIONAL LEGISLATION WOULD BE EXTREMELY COMPLICATED AND PROLONGED, NOTING THAT UNDER BRAZILIAN LAW ILLEGAL FISHING IN TERRITORIAL WATERS CONSTITUTES SMUGGLING AND REQUIRES CRIMINAL PROCEEDINGS. HE NOTED THAT CAPTAIN OF KOREAN BOAT APPREHENDED LAST YEAR IS STILL IN JAIL.

2. EMBASSY OFFICERS COMMENTED THAT TO OUR BEST KNOWLEDGE RECENT INCIDENT WAS AN EXCEPTIONAL CASE AND NOTED THAT ORIGINAL 1972 NEGOTIATIONS HAD DEFINED AREA OF AGREEMENT WITH INTENT TO INCLUDE MAJOR GROUNDS WHERE US SHRIMP BOATS FISHED.

4. IN REPLY TO BATH'S COMMENT ON PROBLEMS ARISING FROM APPLICATION OF GOB NATIONAL LEGISLATION, EMBOFFS MENTIONED EXISTENCE OF US LEGISLATION, SUCH AS FISHERMAN'S PROTECTIVE ACT, AND NOTED REQUIREMENTS FOR AUTOMATIC APPLICATION OF SANCTIONS IN CASES OF SEIZURE OF US VESSELS ON HIGH SEAS. BATH READILY UNDERSTOOD IMPLICATIONS AND REITERATED COMMENT ON UNDESIRABILITY OF APPLYING GOB NATIONAL LEGISLATION. HE SAID THAT, IF ANOTHER INCIDENT OCCURRED, FOREIGN MINISTRY WOULD SEEK TO CONTINUE TO HANDLE CASE AS VIOLATION OF SHRIMP AGREEMENT AND, IN OBLIQUE MANNER, BATH EXPRESSED HOPE THAT USG WOULD NOT PRESS ISSUE TO POINT WHERE ADVERSE REPERCUSSIONS COULD NOT BE AVOIDED.

5. COMMENT - BATH'S REACTION TO NOTE WAS EXPECTED ONE AND CONFIRMED, TO EMBASSY'S SATISFACTION, THAT SEIZURE OF VESSELS OUTSIDE AGREEMENT AREA WAS BASED ON LONG-STANDING GOB CONFIDENTIAL

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INTERPRETATION OF SHRIMP AGREEMENT AND NOT AN ATTEMPT TO CHALLENGE OUR LOS POSITON. HIS ESSENTIALLY PERSONAL COMMENTS ON PROBLEMS THAT WOULD ARISE FROM APPLICATION OF NATIONAL LEGISLATION AND HIS EXPRESSED DESIRE THAT GOB CONTINUE TO APPLY AGREEMENT SHOULD OTHER INCIDENT OCCUR, UNDERSCORES THE FOREIGN MINISTRY'S DESIRE TO AVOID INCIDENTS THAT COULD ESCALATE TO SERIOUS CONFRONTATIONS ON JURIDICAL SEAS ISSUE. IT IT TURNS OUT THAT "TINA MARIE" AND "YOUNG'S"

INCIDENT WAS NOT AN ISOLATED CASE, WHICH MAY BE A POSSIBILITY ACCORDING TO GENEVA 2607, US SHOULD GIVE CONSIDERATION TO POSSIBILITY OF SEEKING TO REOPEN NEGOTIATIONS WITH GOB TO MODIFY AREAS COVERED UNDER AGREEMENT.

6. REGARDING GENEVA 2607, EMBASSY SUGGESTS FURTHER CONTACTS WITH INDUSTRY FOR MORE DEFINITIVE DETERMINATION OF LIKELIHOOD OF FUTURE SHRIMPING IN BRAZILIAN-CLAIMED WATERS OUTSIDE AGREEMENT AREA.

7. AN ADDITIONAL ISSUE THAT REMAINS CONCERNING "TINA MARIE" AND "YOUNG'S" SEIZURE IS OVER CONFISCATION OF CATCH BY GOB UNDER PROVISION OF ARTICLE V (5). CATCH WAS CONFISCATED WITHOUT KNOWLEDGE OF BOAT CAPTAINS OR CONSUL IN BELEM AND ONLY DISCOVERED WHEN CREWS WERE PREPARING TO LEAVE PORT. SUBSEQUENTLY, GOB AUTHORITIES IN BELEM GAVE CONSUL WRITTEN ADVICE OF CONFISCATION CITING AGREEMENT ARTICLE V (5). QUESTION THAT ARISES HERE IS REQUIREMENT FOR RESOLUTION "THROUGH DIPLOMATIC CHANNELS" UNDER ARTICLE X, IN CASE OF A SERIOUS VIOLATION, WITH CLEAR IMPLICATION THAT DIPLOMATIC CHANNELS SHOULD BE USED BEFORE SEVERE PENALTIES, SUCH AS CONFISCATION, ARE IMPOSED. EMBASSY HAS NOT RAISED THIS QUESTION WITH GOB IN THIS CASE SINCE TO DO SO WOULD BE INCONSISTENT WITH OUR POSITION REJECTING APPLICABILITY OF AGREEMENT, BUT DEPARTMENT MAY WISH TO CONSIDER DESIRABILITY OF RAISING THIS WITH GOB IN ORDER TO PREVENT FURTHER APPLICATIONS OF CONFISCATION PENALTY IN ARBITRARY MANNER (APPARENTLY BY BRAZILIAN NAVY WITHOUT PRIOR NOTIFICATION OR CONSULTATION).
CRIMMINS

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NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TERRITORIAL SEA LIMIT, POLICIES, DIPLOMATIC NOTES, FISHING AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 APR 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BRASIL02971
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750136-0649
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750435/aaaabgfa.tel
Line Count: 144
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: LIMDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: LIMDIS
Reference: 75 STATE 86102, 75 BRASILIA 2783
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2003 by BoyleJA>; APPROVED <19 JUN 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: NOTE TO GOB ON SHRIMP VESSEL SEIZURE
TAGS: EFIS, PLOS, BR, US, (BATH, SERGIO)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006